

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2907 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GANESHBHAI TIHABHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR LN MEDIPALLY for Petitioner

NOTICE SERVED for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/12/1999

ORAL JUDGEMENT

The learned advocate Mr. Medipally appearing for the petitioner is not present on call. The respondents, though served, have not entered their appearance.

The petitioner herein claims to have been appointed as a Watchman in the office of the respondent no.2 herein on daily wages. It is the case of the

petitioner that he has been appointed as a Watchman and on the date of the petition, he had served as such for more than five years and was paid Rs.11/- per day as wages. It is the case of the petitioner that other regularly selected Watchmen on permanent establishment were, at the relevant time, paid the regular salary in the payscale of Rs. 196-260 i.e. higher than Rs.11/-per day paid to the petitioner. The petitioner has prayed for the higher wages on the principle of equality enshrined under Articles 14 and 39 (d) of the Constitution of India. The petitioner has relied upon the judgment of the Supreme Court in the matter of SURINDER SINGH & ANR VS THE ENGINEER IN CHIEF CPWD & ORS (AIR 1986, SC, 584). The petitioner has also relied upon two interim orders made in Special Civil Application No. 942/86 and Special Civil Application No. 2352/86.

The petition was admitted to final hearing on 17th November, 1988, however, the interim relief was refused to the petitioner. The respondents were directed to file affidavit-in-reply on or before 30th April, 1989, however, till today, neither the respondents have entered their appearance, nor have filed the counter-affidavit.

Be it noted that except the bald statement made in the petition, the petitioner has not produced either the appointment order or any other documentary evidence in support of his contention. The only document on which the petitioner relies upon is a copy of the certificate dated 28th June, 1985, issued by the Forest Officer certifying that the petitioner was serving as a Watchman in the Community Forestry Project for three years. It is not even the case of the petitioner that he was appointed as a Watchman after following due selection procedure or that he was eligible for such appointment. Unless the petitioner establishes that he was eligible for appointment to the post in question, and that he was selected for the said post after following due procedure, the claim for parity of pay can not be accepted. The Hon'ble Supreme Court has, in the matter of STATE OF HARYANA VS SURINDER KUMAR (AIR 1997, SC 2129), ruled that the clerk appointed as a daily wager was not entitled to same payscale as regular clerk since his recruitment was not made in accordance with rules. In view of the above ruling of the Supreme Court, the petitioner's claim for parity of pay is not sustainable.

Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI